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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
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11 JAMES GOOD,
12 Plaintiff,

13 v.

14 COUNTY OF LOS ANGELES;
15 LEROY DAVID "LEE" BACA, as
16 Former Sheriff in his individual and
17 official capacity; JIM MCDONNELL,
as Sheriff in his individual and official
capacity; DEPUTY PETER
NICHOLAS; DEPUTY JASON WILL,
18 Defendant.
19

Case No. 2:15-CV-04290-DSF(MRWx)
[Honorable Dale S. Fischer,
Magistrate Judge Michael R. Wilner]

**PROTECTIVE ORDER RE
CONFIDENTIAL DOCUMENTS**

20 PURSUANT TO THE STIPULATION OF THE PARTIES ("Stipulation for
21 Entry of Protective Order re Confidential Documents"), and pursuant to the Court's
22 inherent and statutory authority, including but not limited to the Court's authority
23 under the applicable Federal Rules of Civil Procedure and the United States District
24 Court, Central District of California Local Rules; after due consideration of all of
25 the relevant pleadings, papers, and records in this action; and upon such other
26 evidence or argument as was presented to the Court; Good Cause appearing
27 therefor, and in furtherance of the interests of justice, IT IS HEREBY ORDERED
28 that:

1 **1. SCOPE OF PROTECTION.**

2 1.1. The protections conferred by this Order cover not only Protected
3 Material/Confidential Documents, but also (1) any information copied or extracted
4 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
5 Protected Material – even if subsequently obtained by the Receiving Party from
6 Non-Party sources (including but not limited to via subpoena); and (3) any
7 testimony, conversations, or presentations by Parties or their Counsel that might
8 reveal Protected Material. However, the protections conferred by this Order do not
9 cover the following information: (a) any information that is in the public domain at
10 the time of disclosure to a Receiving Party or becomes part of the public domain
11 after its disclosure to a Receiving Party as a result of publication not involving a
12 violation of this Order, including becoming part of the public record through trial or
13 otherwise; and (b) any information known to the Receiving Party prior to the
14 disclosure or obtained by the Receiving Party after the disclosure from a source who
15 obtained the information lawfully and under no obligation of confidentiality to the
16 Designating Party or others.

17 Except to the extent specified herein (if any), any use of Protected Material at
18 trial shall not be governed by this Order, but may be governed by a separate
19 agreement or order. Any use of Protected Material at trial shall be governed by the
20 Orders of the trial judge. The parties' Stipulation and this Protective Order do not
21 govern the use of Protected Material at trial.

22 **2. PURPOSES AND LIMITATIONS.**

23 a. Disclosure and discovery activity in this action are likely to involve
24 production of confidential, proprietary, or private information for which special
25 protection from public disclosure and from use for any purpose other than
26 prosecuting or defending this litigation would be warranted. Accordingly, the
27 parties hereby stipulate to and petition the court to enter the following Order.

28 b. The parties acknowledge that this Order does not confer blanket

1 protections on all disclosures or responses to discovery and that the protection it
2 affords extends only to the specified information or items that are entitled, under the
3 applicable legal principles, to treatment as confidential.

4 c. The parties further acknowledge, as set forth below, that this Order
5 creates no entitlement to file confidential information under seal, except to the
6 extent specified herein. Central District Local Rules 79-5.1 and 79-5.2 set forth the
7 procedures that must be followed and reflects the standards that will be applied
8 when a party seeks permission from the court to file material under seal.

9 d. The parties further acknowledge that any use of protected material at
10 trial shall be governed by the orders of the trial judge.

11 Nothing in this Order shall be construed so as to require or mandate that any
12 Party disclose or produce privileged information or records that could be designated
13 as Confidential Documents/Protected Material hereunder.

14 **3. DURATION OF PROTECTION.**

15 3.1. Even after final disposition of this litigation, the confidentiality
16 obligations imposed by this Order shall remain in effect until a Designating Party
17 agrees otherwise in writing or a court order otherwise directs.

18 3.2. Final disposition shall be deemed to be the later of (1) dismissal of all
19 claims and defenses in this action, with or without prejudice; and (2) final judgment
20 herein after the completion and exhaustion of all appeals, re-hearings, remands,
21 trials, or reviews of this action, including the time limits for filing any motions or
22 applications for extension of time pursuant to applicable law.

23 **4. DESIGNATION OF PROTECTED MATERIAL/CONFIDENTIAL**
24 **DOCUMENTS.**

25 4.1. Exercise of Restraint and Care in Designating Material for Protection.

26 Each Party or non-party that designates information or items for protection
27 under the parties' Stipulation and this Order must take care to limit any such
28 designation to specific material that qualifies under the appropriate standards. A

1 Designating Party must take care to designate for protection only those parts of
2 material, documents, items, or oral or written communications that qualify – so that
3 other portions of the material, documents, items or communications for which
4 protection is not warranted are not swept unjustifiably within the ambit of this
5 Order.

6 Mass, indiscriminate, or routine designations are prohibited. If it comes to a
7 Party's or a non-party's attention that information or items that it designated for
8 protection do not qualify for protection at all, or do not qualify for the level of
9 protection initially asserted, that Party or non-party must promptly notify all other
10 parties that it is withdrawing the mistaken designation.

11 4.2. Manner and Timing of Designations. Except as otherwise provided in
12 this Order, or as otherwise stipulated or ordered, material that qualifies for
13 protection under this Order must be clearly so designated before the material is
14 disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (apart from transcripts of
17 depositions or other pretrial or trial proceedings, and regardless of whether produced
18 in hardcopy or electronic form), that the Producing Party affix the legend
19 "CONFIDENTIAL" to each page that contains Protected Material. If only a portion
20 or portions of the material on a page qualifies for protection, the Producing Party
21 also must clearly identify the protected portion(s) (e.g., by making appropriate
22 markings in the margins) and must specify, for each portion that it is
23 "CONFIDENTIAL." The placement of such "CONFIDENTIAL" stamp on such
24 page(s) shall not obstruct the substance of the page's (or pages') text or content.

25 A Party or Non-Party that makes original documents or materials available for
26 inspection need not designate them for protection until after the inspecting Party has
27 indicated which material it would like copied and produced. During the inspection
28 and before the designation, all of the material made available for inspection shall be

1 deemed "CONFIDENTIAL." After the inspecting Party has identified the
2 documents it wants copied and produced, the Producing Party must determine which
3 documents, or portions thereof, qualify for protection under this Order. Then,
4 before producing the specified documents, the Producing Party must affix the
5 "CONFIDENTIAL" legend to each page that contains Protected Material. If only a
6 portion or portions of the material on a page qualifies for protection, the Producing
7 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
8 markings in the margins).

9 (b) for testimony given in deposition or in other pretrial proceedings, that
10 the Party or non-party offering or sponsoring the testimony identify on the record,
11 before the close of the deposition, hearing, or other proceeding, all protected
12 testimony, and further specify any portions of the testimony that qualify as
13 "CONFIDENTIAL." When it is impractical to identify separately each portion of
14 testimony that is entitled to protection, and when it appears that substantial portions
15 of the testimony may qualify for protection, the Producing Party may invoke on the
16 record (before the deposition or proceeding is concluded) a right to have up to 20
17 days to identify the specific portions of the testimony as "CONFIDENTIAL." Only
18 those portions of the testimony that are appropriately designated as
19 "CONFIDENTIAL" for protection within the 20 days shall be covered by the
20 provisions of the parties' Stipulation and this Protective Order.

21 Transcript pages containing Protected Material must be separately bound by
22 the court reporter, who must affix to each such page the legend "CONFIDENTIAL,"
23 as instructed by the Producing Party.

24 (c) for information produced in some form other than documentary, and for
25 any other tangible items (including but not limited to information produced on disc
26 or electronic data storage device), that the Producing Party affix in a prominent
27 place on the exterior of the container or containers in which the information or item
28 is stored the legend "CONFIDENTIAL." If only portions of the information or item

1 warrant protection, the Producing Party, to the extent practicable, shall identify the
2 protected portions, specifying the material as “CONFIDENTIAL.”

3 4.3. Inadvertent Failures to Designate. If timely corrected (preferably,
4 though not necessarily, within 30 days of production or disclosure of such material),
5 an inadvertent failure to designate qualified information or items as
6 “CONFIDENTIAL” does not, standing alone, waive the Designating Party’s right to
7 secure protection under the parties' Stipulation and this Order for such material. If
8 material is appropriately designated as “CONFIDENTIAL” after the material was
9 initially produced, the Receiving Party, on timely notification of the designation,
10 must make reasonable efforts to assure that the material is treated in accordance
11 with the parties' Stipulation and this Order.

12 4.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party
13 shall not alter, edit, or modify any Protected Material so as to conceal, obscure, or
14 remove a “CONFIDENTIAL” stamp or legend thereon; nor shall a Receiving Party
15 take any other action so as to make it appear that Protected Material is not subject to
16 the terms and provisions of the parties' Stipulation and this Order. However,
17 nothing in this section shall be construed so as to prevent a Receiving Party from
18 challenging a confidentiality designation subject to the provisions of section 7, infra.

19 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

20 5.1. Timing of Challenges. Any Party or Non-Party may challenge a
21 designation of confidentiality at any time that is consistent with the Court's
22 Scheduling Order. Unless a prompt challenge to a Designating Party’s
23 confidentiality designation is necessary to avoid foreseeable substantial unfairness,
24 unnecessary economic burdens, or a later significant disruption or delay of the
25 litigation, a Party does not waive its right to challenge a confidentiality designation
26 by electing not to mount a challenge promptly after the original designation is
27 disclosed.

28 5.2. Meet and Confer. Prior to challenging a confidentiality designation, a

1 Challenging Party shall initiate a dispute resolution process by providing written
2 notice of each specific designation it is challenging, and describing the basis (and
3 supporting authority or argument) for each challenge. To avoid ambiguity as to
4 whether a challenge has been made, the written notice must recite that the challenge
5 to confidentiality is being made in accordance with this specific paragraph of the
6 associated Protective Order. The parties shall attempt to resolve each challenge in
7 good faith and must begin the process by conferring directly (in voice to voice
8 dialogue, either in person, telephonically, or by other comparable means, but not by
9 correspondence) within 10 days of the date of service of notice pursuant to Local
10 Rule 37-1.

11 In conferring, the Challenging Party must explain the specific basis for its
12 belief that the confidentiality designation was not proper and must give the
13 Designating Party an opportunity to review the designated material, to reconsider
14 the circumstances, and, if no change in designation is offered, to explain the basis
15 for the chosen designation. A Challenging Party may proceed to the next stage of
16 the challenge process only if it has engaged in this meet and confer process first or
17 establishes that the Designating Party is unwilling to participate in the meet and
18 confer process in a timely manner.

19 5.3. Judicial Intervention. If the Parties cannot resolve a confidentiality
20 challenge without court intervention, the Challenging Party shall file and serve a
21 motion to remove confidentiality along with a joint stipulation pursuant to Local
22 Rule 37-2.1 (under the applicable rules for filing and service of discovery motions)
23 within 10 days of the parties agreeing that the meet and confer process will not
24 resolve their dispute, or by the first day of trial of this matter, whichever date is
25 earlier – unless the parties agree in writing to a longer time. Each such motion must
26 be accompanied by a competent declaration affirming that the movant has complied
27 with the meet and confer requirements imposed in the preceding paragraph. In
28 addition, the Challenging Party may file a motion challenging a confidentiality

1 designation at any time if there is good cause for doing so, including a challenge to
2 the designation of a deposition transcript or any portions thereof. Any motion
3 brought pursuant to this provision must be accompanied by a competent declaration
4 affirming that the movant has complied with the meet and confer requirements
5 imposed by the preceding paragraph. Any motion challenging a designation brought
6 pursuant to this paragraph must be done so in strict compliance with Local Rules 37-
7 1 and 37-2 (including the Joint Stipulation requirement).

8 The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party, regardless of whether the Designating Party is the moving party
10 or whether such Party sought or opposes judicial intervention. Frivolous challenges,
11 and those made for an improper purpose (e.g., to harass or impose unnecessary
12 expenses and burdens on other parties) may expose the Challenging Party to
13 sanctions. Unless the Designating Party has waived the confidentiality designation
14 by failing to oppose a motion to remove confidentiality as described above, all
15 parties shall continue to afford the material in question the level of protection to
16 which it is entitled under the Producing Party's designation until the court rules on
17 the challenge.

18 5.4. Withdrawal of "CONFIDENTIAL" Designation. At its discretion, a
19 Designating Party may remove Protected Material/Confidential Documents from
20 some or all of the protections and provisions of the parties' Stipulation and this
21 Order at any time by any of the following methods:

22 (a) Express Written Withdrawal. A Designating Party may withdraw a
23 "CONFIDENTIAL" designation made to any specified Protected Material/
24 Confidential Documents from some or all of the protections of the parties'
25 Stipulation and this Order by an express withdrawal in a writing signed by such
26 Party (or such Party's Counsel, but not including staff of such Counsel) that
27 specifies and itemizes the Disclosure or Discovery Material previously designated as
28 Protected Material/Confidential Documents that shall no longer be subject to all or

1 some of the provisions of the parties' Stipulation and this Order. Such express
2 withdrawal shall be effective when transmitted or served upon the Receiving Party.
3 If a Designating Party is withdrawing Protected Material from only some of the
4 provisions/protections of the parties' Stipulation and this Order, such Party must
5 state which specific provisions are no longer to be enforced as to the specified
6 material for which confidentiality protection hereunder is withdrawn: otherwise,
7 such withdrawal shall be construed as a withdrawal of such material from all of the
8 protections/provisions of the parties' Stipulation and this Order;

9 (b) Express Withdrawal on the Record. A Designating Party may
10 withdraw a "CONFIDENTIAL" designation made to any specified Protected
11 Material/Confidential Documents from all of the provisions/protections of the
12 parties' Stipulation and this Order by verbally consenting in court proceedings on
13 the record to such withdrawal – provided that such withdrawal specifies the
14 Disclosure or Discovery Material previously designated as Protected Material/
15 Confidential Documents that shall no longer be subject to any of the provisions of
16 the parties' Stipulation and this Order. A Designating Party is not permitted to
17 withdraw Protected Material from only some of the protections/provisions of the
18 parties' Stipulation and this Order by this method;

19 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A
20 Designating Party shall be construed to have withdrawn a "CONFIDENTIAL"
21 designation made to any specified Protected Material/Confidential Documents from
22 all of the provisions/protections of the parties' Stipulation and this Order by either
23 (1) making such Protected Material/Confidential Records part of the public record –
24 including but not limited to attaching such as exhibits to any filing with the court
25 without moving, prior to such filing, for the court to seal such records; or (2) failing
26 to timely oppose a Challenging Party's motion to remove a "CONFIDENTIAL"
27 designation to specified Protected Material/Confidential Documents. Nothing in the
28 parties' Stipulation and this Order shall be construed so as to require any Party to file

Protected Material/Confidential Documents under seal, unless expressly specified herein.

6. ACCESS TO AND USE OF PROTECTED MATERIAL.

6.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for preparing, prosecuting, defending, or attempting to settle this litigation – up to and including final disposition of the above-entitled action – and not for any other purpose, including any other litigation or dispute outside the scope of this action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in the parties' Stipulation and this Order. When the above entitled litigation has been terminated, a Receiving Party must comply with the provisions of section 13, below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under the parties' Stipulation and this Order.

6.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of such Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation – each of whom, by accepting receipt of such Protected Material, thereby agree to be bound by the parties' Stipulation and this Order;

(c) experts (as defined in the parties' Stipulation and this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation – each

1 of whom, by accepting receipt of such Protected Material, thereby agree to be bound
2 by the parties' Stipulation and this Order;

3 (d) court reporters, their staffs, and Professional Vendors to whom
4 disclosure is reasonably necessary for this litigation – each of whom, by accepting
5 receipt of such Protected Material, thereby agree to be bound by the parties'
6 Stipulation and this Order;

7 (e) during their depositions, witnesses in the action to whom disclosure is
8 reasonably necessary – each of whom, by accepting receipt of such Protected
9 Material, thereby agree to be bound by the parties' Stipulation and this Order. Pages
10 of transcribed deposition testimony or exhibits to depositions that reveal Protected
11 Material must be separately bound by the court reporter and may not be disclosed to
12 anyone except as permitted under the parties' Stipulation and this Protective Order.

13 (f) the author or custodian of a document containing the information that
14 constitutes Protected Material, or other person who otherwise possessed or knew the
15 information.

16 6.3. Notice of Confidentiality. Prior to producing or disclosing Protected
17 Material/Confidential Documents to persons to whom the parties' Stipulation and
18 this Order permits disclosure or production (see section 9.2, supra), a Receiving
19 Party shall provide a copy of this Order to such persons so as to put such persons on
20 notice as to the restrictions imposed upon them herein: except that, for court
21 reporters, Professional Vendors, and for witnesses being provided with Protected
22 Material during a deposition, it shall be sufficient notice for Counsel for the
23 Receiving Party to give the witness a verbal admonition (on the record, for
24 witnesses) regarding the provisions of the parties' Stipulation and this Order and
25 such provisions' applicability to specified Protected Material at issue.

26 6.4. Reservation of Rights. Nothing in the parties' Stipulation and this
27 Order shall be construed so as to require any Producing Party to designate any
28 records or materials as "CONFIDENTIAL." Nothing in the parties' Stipulation and

1 this Order shall be construed so as to prevent the admission of Protected Material
 2 into evidence at the trial of this action, or in any appellate proceedings for this
 3 action, solely on the basis that such Disclosure or Discovery Material has been
 4 designated as Protected Material/Confidential Documents. Notwithstanding the
 5 foregoing, nothing in the parties' Stipulation and this Order shall be construed as a
 6 waiver of any privileges or of any rights to object to the use or admission into
 7 evidence of any Protected Material in any proceeding; nor shall anything herein be
 8 construed as a concession that any privileges asserted or objections made are valid
 9 or applicable. Nothing in the parties' Stipulation and this Order shall be construed
 10 so as to prevent the Designating Party (or its Counsel or custodian of records) from
 11 having access to and using Protected Material designated by that Party in the
 12 manner in which such persons or entities would typically use such materials in the
 13 normal course of their duties or profession – except that the waiver of
 14 confidentiality provisions shall apply (see section 7.4(c), supra).

15 6.5. Requirement to File Confidential Documents Under Seal. Confidential
 16 Documents may be submitted in all law and motion proceedings before the Court if
 17 done so under seal pursuant to Local Rules 79-5.1 and 79-5.2 (as applicable) and
 18 pursuant to the provisions of the parties' Stipulation and this Order. If any
 19 Receiving Party attaches any Confidential Documents to any pleading, motion, or
 20 other paper to be filed, lodged, or otherwise submitted to the Court, such
 21 Confidential Document(s) shall be filed/lodged under seal pursuant to Local Rules
 22 79-5.1 and 79-5.2, to the extent applicable.

23 However, this paragraph (§ 8.5) shall not be construed so as to prevent a
 24 Designating Party or counsel from submitting, filing, lodging, or publishing any
 25 document it has previously designated as a Confidential Document without
 26 compliance with this paragraph's requirement to do so under seal (i.e., a producing-
 27 disclosing party or counsel may submit or publish its own Confidential Documents
 28 without being in violation of the terms of the parties' Stipulation and this Protective

1 Order).

2 Furthermore, a Receiving Party shall be exempted from the requirements of
3 this paragraph as to any specifically identified Confidential Document(s) where –
4 prior to the submission or publication of the Confidential Document(s) at issue – the
5 Designating Party of such specifically identified Confidential Document(s) has
6 waived/withdrawn the protections of the parties' Stipulation and this Order (pursuant
7 to paragraph 7.4, supra).

8 A Receiving Party shall also be exempt from the sealing requirements of this
9 paragraph (§ 8.5) where the Confidential Documents/Protected Material at issue
10 is/are not documents, records, or information regarding or incorporating:

11 (1) private, personal information contained in peace officer personnel files
12 (such as social security numbers, driver's license numbers or comparable personal
13 government identification numbers, residential addresses, compensation or pension
14 or personal property information, credit card numbers or credit information, dates of
15 birth, tax records and information, information related to the identity of an officer's
16 family members or co-residents, and comparable personal information about the
17 officer or his family);

18 (2) any internal affairs or comparable investigation by any law
19 enforcement agency into alleged officer misconduct; and/or

20 (3) the medical records or records of psychiatric or psychological treatment
21 of any peace officer or party to this action.

22 Nothing in this paragraph (§ 8.5) shall be construed to bind the Court so as to
23 limit or prevent the publication of any Confidential Documents to the jury or
24 factfinder, at the time of trial of this matter, where the Court has deemed such
25 Confidential Documents to be admissible into evidence. Further, all parties
26 acknowledge that Court proceedings are open to the public, and any Confidential
27 Information raised in open Court is subject to public notice.

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1 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION.**

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party, preferably (though
7 not necessarily) by facsimile or electronic mail. Such notification shall include a
8 copy of the subpoena or court order at issue;

9 (b) promptly notify in writing the party who caused the subpoena or order
10 to issue in the other litigation that some or all of the material covered by the
11 subpoena or order is subject to the parties' Stipulation and this Protective Order.
12 Such notification shall include a copy of the parties' Stipulation and this Protective
13 Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be
15 pursued by all sides in any such situation, while adhering to the terms of the parties'
16 Stipulation and this Order.

17 If the Designating Party timely seeks a protective order, the Party served with
18 the subpoena or court order shall not produce any information designated in this
19 action as “CONFIDENTIAL” before a determination by the court from which the
20 subpoena or order issued, unless the Party has obtained the Designating Party’s
21 permission. The Designating Party shall bear the burden and expense of seeking
22 protection in that court of its confidential material – and nothing in these provisions
23 should be construed as authorizing or encouraging a Receiving Party in this action
24 to disobey a lawful directive from another court.

25 The purpose of this section is to ensure that the affected Party has a
26 meaningful opportunity to preserve its confidentiality interests in the court from
27 which the subpoena or court order issued.

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1 **8. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION.**

3 (a) The terms of the parties' Stipulation and this Order are applicable to
4 information produced by a Non-Party in this action and designated as
5 "CONFIDENTIAL." Such information produced by Non-Parties in connection with
6 this litigation is protected by the remedies and relief provided by the parties'
7 Stipulation and this Order. Nothing in these provisions should be construed as
8 prohibiting a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
10 produce a Non-Party's confidential information in its possession, and the Party is
11 subject to an agreement with the Non-Party not to produce the Non-Party's
12 confidential information, then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the Non-
14 Party that some or all of the information requested is subject to a confidentiality
15 agreement with a Non-Party;

16 (2) promptly provide the Non-Party with a copy of the parties'
17 Stipulation and this Order in this litigation, the relevant discovery request(s), and a
18 reasonably specific description of the information requested; and

19 (3) make the information requested available for inspection by the
20 Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from this
22 court within 14 days of receiving the notice and accompanying information, the
23 Receiving Party may produce the Non-Party's confidential information responsive
24 to the discovery request. If the Non-Party timely seeks a protective order, the
25 Receiving Party shall not produce any information in its possession or control that is
26 subject to the confidentiality agreement with the Non-Party before a determination
27 by the court. Absent a court order to the contrary, the Non-Party shall bear the
28 burden and expense of seeking protection in this court of its Protected Material.

1 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

2 9.1. Unauthorized Disclosure of Protected Material.

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
4 Protected Material to any person or in any circumstance not authorized under the
5 parties' Stipulation and this Order, the Receiving Party must immediately:

- 6 (a) notify in writing the Designating Party of the unauthorized disclosures;
7 (b) use its best efforts to retrieve all copies of the Protected Material;
8 (c) inform the person or persons to whom unauthorized disclosures were
9 made of all the terms of this Order; and
10 (d) request such person or persons consent to be bound by the Stipulation
11 and this Order.

12 9.2. Inadvertent Production of Privileged or Otherwise Protected Material.

13 When a Producing Party gives notice to Receiving Parties that certain
14 inadvertently produced material is subject to a claim of privilege or other protection,
15 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
16 Procedure 26(b)(5)(B). [See also Cal. Code Civ. Proc. § 2031.240(c).] This
17 provision is not intended to modify whatever procedure may be established in an e-
18 discovery order that provides for production without prior privilege review.
19 Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
20 agreement on the effect of disclosure of a communication or information covered by
21 the attorney-client privilege or work-product protection, the parties may incorporate
22 their agreement in the stipulated protective order submitted to the court.

23 **10. PUBLICATION OF PROTECTED MATERIAL PROHIBITED.**

24 10.1. Filing of Protected Material.

25 Without advance written permission from the Designating Party, or a court
26 order secured after appropriate notice to all interested persons, a Receiving Party
27 may not file in the public record in this action any Protected Material. A Party that
28 seeks to file under seal any Protected Material must comply must comply with the

1 applicable Federal and Local Rules.

2 10.2. Public Dissemination of Protected Material.

3 A Receiving Party shall not publish, release, post, or disseminate Protected
4 Material to any persons except those specifically delineated and authorized by the
5 parties' Stipulation and this Order (see section 8, supra); nor shall a Receiving Party
6 publish, release, leak, post, or disseminate Protected Material/Confidential
7 Documents to any news media, member of the press, website, or public forum
8 (except as permitted under section 12.1 regarding filings with the court in this action
9 and under seal).

10 **11. FINAL DISPOSITION.**

11 11.1. Unless otherwise ordered or agreed in writing by the Producing Party,
12 within 30 days after the final termination of this action (defined as the dismissal or
13 entry of judgment by the above named court, or if an appeal is filed, the disposition
14 of the appeal), upon written request by the Producing Party, each Receiving Party
15 must return all Protected Material to the Producing Party – whether retained by the
16 Receiving Party or its Counsel, Experts, Professional Vendors, agents, or any non-
17 party to whom the Receiving Party produced or shared such records or information.
18 As used in this subdivision, “all Protected Material” includes all copies, abstracts,
19 compilations, summaries or any other form of reproducing or capturing any of the
20 Protected Material, regardless of the medium (hardcopy, electronic, or otherwise) in
21 which such Protected Material is stored or retained.

22 In the alternative, at the discretion of the Receiving Party, the Receiving Party
23 may destroy some or all of the Protected Material instead of returning it – unless
24 such Protected Material is an original, in which case, the Receiving Party must
25 obtain the Producing Party’s written consent before destroying such original
26 Protected Material.

27 11.2. Whether the Protected Material is returned or destroyed, the Receiving
28 Party must submit a written certification to the Producing Party (and, if not the same

1 person or entity, to the Designating Party) within thirty (30) days of the
2 aforementioned written request by the Designating Party that specifically identifies
3 (by category, where appropriate) all the Protected Material that was returned or
4 destroyed and that affirms that the Receiving Party has not retained any copies,
5 abstracts, compilations, summaries or other forms of reproducing or capturing any
6 of the Protected material (in any medium, including but not limited to any hardcopy,
7 electronic or digital copy, or otherwise).

8 Notwithstanding this provision, Counsel are entitled to retain an archival copy
9 of all pleadings, motion papers, transcripts, legal memoranda filed with the court in
10 this action, as well as any correspondence or attorney work product prepared by
11 Counsel for the Receiving Party, even if such materials contain Protected Material;
12 however, any such archival copies that contain or constitute Protected Material
13 remain subject to this Protective Order as set forth in Section 5 (DURATION),
14 above. This court shall retain jurisdiction in the event that a Designating Party
15 elects to seek court sanctions for violation of the parties' Stipulation and this Order.

16 **12. MISCELLANEOUS.**

17 12.1. Right to Further Relief. Nothing in the parties' Stipulation and this
18 Order abridges the right of any person to seek its modification by the Court in the
19 future.

20 12.2. Right to Assert Other Objections. By stipulating to the entry of a
21 Protective Order pursuant to the parties' Stipulation , no Party waives any right it
22 otherwise would have to object to disclosing or producing any information or item
23 on any ground not addressed in the parties' Stipulation and this Order. Similarly, no
24 Party waives any right to object on any ground to use in evidence any of the material
25 covered by the parties' Stipulation and this Order.

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1 The provisions of the parties' Stipulation and this Protective Order shall be in
2 effect until further Order of the Court.

3 **IT IS SO ORDERED.**

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5 Dated: March 31, 2017


UNITED STATES MAGISTRATE JUDGE
MICHAEL R. WILNER

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9 *Respectfully Submitted by:*

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